



Donald P. Wagner, Mayor

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November 14, 2018

**VIA ELECTRONIC FILING**

Chairman Ajit Pai  
Commissioner Michael O'Rielly  
Commissioner Brendan Carr  
Commissioner Jessica Rosenworcel  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**RE: MB Docket No. 05-311. Second Further Notice of Proposed Rulemaking. Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992.**

Honorable Chairman Pai and Commissioners O'Rielly, Carr, and Rosenworcel:

As Mayor of the City of Irvine, California, I strongly oppose the Further Notice of Proposed Rulemaking (FNPRM), which proposes to allow cable companies to deduct the fair market value for a wide range of public benefits from their franchise fee obligations – namely Public, Educational, and Government (PEG) channel capacity and transmission.

The Federal Communications Commission (FCC) should not allow any offset of PEG channel capacity costs from franchise fee obligations because cable companies are paying a franchise fee for the right to use the *public* right-of-way to operate its *private* business. Cities permit transmission equipment and related electrical supplies cut into public roadways and – unsightly, but necessary – aboveground on sidewalks and parkways, and *private* equipment within and along miles of public streets and sidewalks. Cable companies should continue to pay its full 5% to use public facilities.

The FCC should take a stand in support of PEG channels and transparency, which is more important than ever. PEG programming offers a host of community benefits, including public access channels, educational access channels, and government access channels all aimed at providing locally beneficial information.

The City of Irvine, California invests its own funds to create vital programming for our residents, businesses, and visitors. Irvine televises meetings, creates videos highlighting our multi-cultural activities, budgets, policy discussions critical to day-to-day life, youth services, local history, and so much more. We know people are watching so they can stay engaged without necessarily driving to City Hall at 6, 8, 10 p.m. at night. Our school district and community college use the important channels for school related activities and other educational purposes.

Most regrettably, however, is that this FNPRM threatens to limit or eliminate public, educational, and government access channels all meant to inform and empower the public. The potential loss of this public benefit alone should be concerning enough for the FCC to reject this FNPRM. Reducing critical revenues could cause some agencies to cancel PEG channels because they cannot afford to lose revenue. The 5% franchise fee should be paid in full, with no deductions.

In 2006, California passed the Digital Infrastructure and Video Competition Act, which streamlined the deployment of cable services by making the California Public Utilities Commission (CPUC) the sole franchising authority in the state and preserved many of the provisions commonly found in local franchise ordinances. It was the intent of the California Legislature to streamline deployment while keeping local government revenues intact – ensuring local public rights-of-way remained under control of cities and counties, and that a sufficient amount of capacity on cable networks was preserved PEG access channels.

The FCC should exempt centralized state issued franchises from its Orders, threatening to undermine such priorities. As proposed, the FNPRMs broad definition of all “cable-related, in-kind contributions” other than PEG capital costs and build out requirements should not be treated as “franchise fees.” The “fair market value” of such services may be impossible to discern and would likely be a source of litigation between cable operators and local governments.

Unfortunately, the FNPRM further threatens the use of local rights-of-way for non-cable related purposes. The FNPRM also proposes to prohibit local governments from regulating the facilities and equipment used by cable operators in the provision of non-cable services, such as wireless communications services. If preempted from regulating these installations outside the franchise (since these franchises do not generally address the use of rights-of-way for non-cable facilities), local governments may lose their authority to manage a cable company’s deployment of non-cable facilities, such as “small cells.” This preemption would threaten to extend to fees for use of the rights-of-way, meaning:

- Cable companies could use local rights-of-way for any purpose, regardless of the terms of the franchise, and avoid having to pay fair compensation to the local government for the use of publicly funded assets in the rights-of-way.

- Cable companies could potentially install "small wireless facilities" with little to no public input, without having to meet any aesthetic or equipment size requirements aimed to mitigate blight and preserve community character.

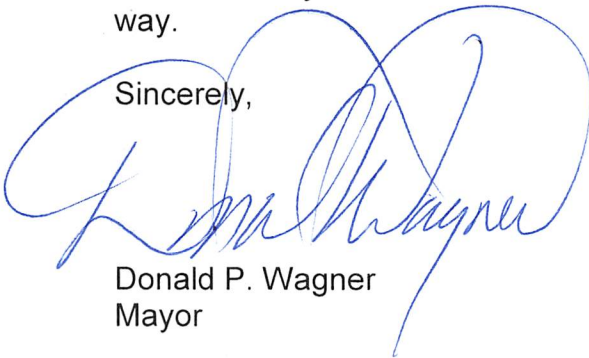
Fair and appropriate use of the public right-of-way is the fundamental policy principle for the imposition of a cable franchise fee and any other reasonable conditions required to preserve the character of each community. While the cable and telecommunications industry continues to attack the responsibility of local governments to protect the public health and safety of their own communities, our residents stand to lose the most in terms of the public benefits they receive and the public input they provide for facilities installed in their own backyards. The FCC should instead consider ways that cable operators can:

- improve their services;
- help close digital divides; and
- expand deployment to rural and lower income communities.

Unfortunately, this FRNPRM continues a recent pattern of lowering standards and public responsibility for the communications industry as a whole.

As Mayor of the City of Irvine, California, I **oppose** the FNPRM and respectfully urge the FCC to reject the deterioration of PEG services and fair use of the public right-of-way.

Sincerely,



Donald P. Wagner  
Mayor

cc: Representative Mimi Walters  
Irvine City Council  
Tony Cardenas, Public Affairs Regional Manager, League of California Cities  
Meg Desmond, League of California Cities  
Van Scoyoc Associates